IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 4917 OF 2005.
IN
FIRST APPEAL NO.1090 OF 2006.

Shivshankar Musai Gupta & others. ... Applicants.
Versus.
Virar Municipal Council & anr. ... Respondents.

Shri A.Y.Sakhare, Senior Counsel i/by Mrs.Neeta P.Karnik for the Applicants.

Shri B.D.Joshi i/by Ms.Mandakini Karandikar for the Respondent No.1.

CORAM : ABHAY S.OKA, J.

DATED : 8th March, 2007.

P.C.:

1. The First Appeal has been admitted for final hearing. The Appellants are in possession of separate shop premises. Their case is that the erstwhile Virar Grampanchayat had granted lease in respect of land below the suit shop premises in their favour. After formation of the first Respondent Municipal Council, according to the Appellants, a threat was given to demolish the said shops. Therefore, the suit was filed for protection of possession. By the impugned Judgment and decree, the trial Court held that the Appellants have failed to establish that they have any right in respect of the land below the shops. The Court held that the suit was not maintainable. The suit has been dismissed. While dismissing the suit, the trial Court has directed that

every shop shall be valued at Rs.5,00,000/- and deficit Court fee shall be paid according to the said valuation. The trial Court also directed the Appellants to pay compensation of Rs.50,000/- to the first Respondent-Municipal Council.

2. The prayer in this Application is for stay and temporary injunction. So far as direction to pay deficit court fee and compensation is concerned, the said part of the decree deserves to be stayed.

3. The contention of the First Respondent is that due to the existence of shops/structures of the Appellants it is not possible to carry out public utility works. It is stated that some of the shops are affected by road widening and remaining are affecting the work of construction of a Municipal Market.

4. When a query was made by this Court as to whether certain other shops can be allotted elsewhere to the Appellants by way of interim arrangement during the pendency of the Appeal, an affidavit dated 28th February 2007 has been filed on behalf of the First Respondent by its Chief Officer setting out details of the stops available in a building constructed by the First Respondent. In paragraph 4 of the Affidavit, it is stated as under:

"4. I say that shop Nos.1 to 17 admeasures 52.50 sq.ft. carpet area. Shop No.30 admeasures 64 sq.ft. carpet area. Shop Nos.34 and 35 admeasures 114.75 sq.ft. carpet area and shop Nos.21, 22, 27 and 28 admeasures 134 sq.ft. carpet area. These shops can be allotted to the Appellants as per the direction of this Hon'ble Court immediately. I further state that shop Nos.23, 24, 25 and 26 admeasures 134 sq.ft. carpet area and shop Nos.36, 37 and 38 admeasures about 114.75 sq.ft. carpet area. However, these shops can be allotted to the Appellants after the same is constructed by the Municipal Council as stated hereinabove. I further say and submit that the persons who are allotted shops in the shopping complex which is yet to be constructed the Municipal Council is ready and willing to accommodate such persons temporarily in the premises available with the Municipal Council i.e. the area earmarked in yellow colour on the map annexed hereto."

4. The area for the aforesaid shops which are available as of today and which will be available in future is stated to be less than the area of the shops

at present held by the Appellants. Shri Joshi appearing for the 1st Respondent states that the Respondent No.1 requires time of six months from the date on which the Appellants vacate their respective shops to construct shop Nos.23, 24, 25, 26, 36, 37 and 38.

5. Pending final disposal of the Appeal, the Appellants cannot be allowed to occupy shops held by them at present as the shops are required to be demolished for road widening and/or for construction of Municipal Shopping Centre. The Appellants will have to vacate their respective shop premises held by them and will have to hand over possession of the shops to the 1st Respondent within a period of six weeks from today. Initially within the period of six weeks from today, the 1st Respondent will allot to the Appellants on adhoc basis shops out of shops Nos.21, 22, 27, 28, 34, 35, 33 and 1 to 17 after drawing lots. The Appellants shall continue to occupy the tenements as per the lots till shop Nos.23 to 26 and 36 to 38 are made available after construction. The Appellants will have to naturally pay the compensation/rent, electricity charges, and other outgoings in respect of the new shop premises.

6. A grievance is made by the Advocate for the Appellants that most of the Appellants will get shop premises having an area which is less than the area of

the shop premises at present held by them. Prima facie, the Appellants cannot claim to be lessees of the 1st Respondent-Council in respect of the land below the shop premises as the finding of the trial Court is that the Plaintiffs/Appellants have failed to establish the said claim. The finding of the trial Court is that the Appellants have no right. Apart from the said fact, the structures in possession of the Appellants are affecting the public work. By way of interim arrangement, the Appellants will be placed in possession of the newly constructed shop premises and therefore, there will be no prejudice to them.

7. Hence the Civil Application is disposed of by passing the following order:

(i) Till final disposal of the Appeal, the execution and operation of clause (2) and clause (3) of the operative part of the impugned decree will remain stayed. In case the Appellants fail in the Appeal, they will have to pay not only the deficit Court fees in the suit but also the deficit Court fee in the present Appeal.

(ii) Within a period of six weeks from today,

the 1st Respondent will allot to the Appellants on adhoc basis one shop each out of Shop Nos.1 to 17, 21, 22, 27, 28, 34 and 35 by drawing lots after notice to the Appellants. The allotment of the shops to the Appellants will be on adhoc basis till construction of Shops Nos.23, 24, 25, 26, 36, 37 and 38 is completed. After receiving the letter of allotment, the Appellants shall vacate the present structures held by them by handing over vacant possession thereof to the 1st Respondent-Council and will shift to the aforesaid shops which may be allotted as aforesaid by the 1st Respondent. If any of the Appellants fail to vacate the structures held by them at present within a period of one week from the date of receipt of letter of allotment, the 1st Respondent-Council will be free to proceed with the demolition of the structures held by the said Appellants.

(iii) After completion of the construction of the Shop Nos.23 to 26 and 36 to 38, fresh lots will be drawn by the 1st Respondent-Council for allotment of one

shop each on adhoc basis to the Appellants. Lots will be drawn after prior notice to the Appellants. The lots will be in respect of Shop Nos.1 to 17, 21 to 26, 27, 28 and 34 to 38.

(iv) After fresh lots are drawn as aforesaid, the 1st Respondent will issue letters of allotment of the shop premises to the Appellants and the Appellants shall occupy the shop premises so allotted within a period of one week from the date of the receipt of the letters of allotment. If the Appellants fail to vacate the shops allotted to them on adhoc basis earlier within a period of one week from the date of receiving the allotment letter, it will be open for the 1st Respondent to dispossess such Appellants.

(v) The Appellants will continue to occupy the shop premises so allotted till the final disposal of the Appeal subject to the final outcome of the Appeal. It is made clear that the allotment of shops to the Appellants will be made by the 1st

Respondent-Council only by way of an interim arrangement and no equities will be created in favour of the Appellants by virtue of such allotment.

(vi) The Appellants will regularly and punctually pay compensation/rent electricity charges and other charges in respect of the suit premises to the First Respondent. On failure of any of the Appellants to pay the said amounts regularly, it will be open for the 1st Respondent to move this Court for modification of this order.

(vii) Civil application is disposed of in the above terms with no order as to costs.

(viii) The parties to act on an authenticated copy of this order.

Judge.